

REMARKS

Please cancel claims 62 and 87 without prejudice.

Applicant submits an affidavit under 37 CFR 1.131 to swear behind U.S. Patent No. 6,239,765 ("Johnson").

Johnson was filed on August 24, 1999. Although Johnson claims priority to the provisional Application Serial No. 60/121,989, this provisional application does not disclose the subject matter relied upon in the rejections of the claims of the present application. Thus, the portion of the disclosure of Johnson which was relied upon for the rejections does not entitle to the earlier filing date of the provisional Application Serial No. 60/121,989. Thus, the priority date of the portion of the disclosure of Johnson which was relied upon for the rejections is August 24, 1999.

The attached affidavit established that the parent application of the present application was ready for filing at least on August 11, 1999. Applicant's representative worked diligently to obtain inventor signatures, by sending the requests for inventor signatures on August 11, 1999 and again on August 24, 1999. Failing to obtain the inventor signatures in a short time, Applicant's representative filed the parent application of the present application on September 2, 1999, without inventor signatures.

Thus, the invention as described in the parent application of the present application was conceived at least before August 11, 1999, which is before August 24, 1999, the filing date of Johnson; and the Applicant's representative worked diligently to file the application.

Therefore, Johnson is not a prior art under 35 U.S.C. 102(e). The withdrawal of the rejections based on Johnson is respectfully requested.

CONCLUSION

It is respectfully submitted that all of the Examiner's objections have been successfully traversed and that the application is now in order for allowance. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

Respectfully submitted,

Date: December 18, 2008

/John P. Ward/

John P. Ward
Reg. No. 40,216

Customer Number 64494
GREENBERG TRAURIG, LLP
(650) 328-8500 Telephone
(650) 328-8508 Facsimile